



PATENT
Docket No. 400-009

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
)	Group Art Unit: 3728
Andrea F. Bell)	
)	Examiner: J. Foster
Entitled: UTILITY APRON)	
)	
Filed: July 28, 1997)	
)	
Serial No.: 08/901,713)	
)	

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MAR 27 2001

OFFICE OF PETITIONS

Assistant Commissioner
for Patents
Washington, D.C. 20231

RESPONSE TO OFFICE ACTION NO. 4

In response to the Office Action of May 4, 2000 (Paper No. 15), and in light of the Petition to Revive and Continued Prosecution Application filed concurrently herewith, please consider the following in connection with the continued prosecution of this application.

Applicant hereby incorporates by express reference and reaffirms the positions and responses set forth in the responses to Office Actions filed on September 8, 1998, May 17, 1999 and February 25, 2000, as if fully set forth herein.

**Rejection of Claims 1-31 Under
Section 103(a) (Lindsay and Baumgartner)**

As previously explained, Applicant submits that independent claim 1 patentably distinguishes over Lindsay (U.S. Patent No. 4,993,551) because Lindsay fails to disclose or suggest a utility apron in a combination of elements which comprise

a shell having lip portion for contacting the lip of the support device and an exterior surface for disposition at the exterior of the support device, and which further includes a pocket disposed upon the exterior surface of the shell away from the longitudinal axis, the pocket including a resilient opening, the size of the opening being variable depending upon the extent to which the resilient opening is extended, as recited in claim 1.

Lindsay discloses a tool holder with pockets, wherein the tool holder is used with a 5 gallon bucket to hold carpenter or tradesman tools. Lindsay specifically fails to disclose a utility apron wherein any of the pockets have a resilient opening, and wherein the size of the opening is variable depending upon the extent to which the resilient opening is extended, as recited in claim 1.

The combination using Baumgartner is improper because Baumgartner is directed to an over arm carrying bag, and thus constitutes non-analogous art. Over arm carrying bags certainly are not within the field of the invention or the Applicant's field of endeavor. Nor are they reasonably pertinent to such field. One of ordinary skill in the art, seeking to improve upon utility aprons, would not have turned to the field of over arm carrying bags to find solutions.

Baumgartner also does not aid Lindsay in that there is no suggestion or motivation in either reference to make the modifications and combinations proposed in the Office Action in making the rejection. Nothing in Baumgartner would have suggested or motivated one of ordinary skill in the art to apply any of its teachings to a utility apron. Utility aprons are not mentioned in Baumgartner, nor can Applicant

find any mention or suggestion in Baumgartner to apply any of its teachings to utility aprons.

In view of the foregoing, claims 1-9 and 27-28 patentably distinguish over Lindsay and Berry et al. They are in condition for allowance, and Applicant therefore requests that these claims be allowed to issue.

Claims 10-18 and 29-30 patentably distinguish over Lindsay and Baumgartner, taken alone or in combination, for the reasons set forth above with respect to claims 1-9 and 27-28.

Claims 19-26 and 31 also patentably distinguish over Lindsay and Baumgartner, taken alone or in combination, for the reasons set forth above with respect to claims 1-9 and 27-28.

Rejection of Claims 1-31
Under Section 103(a) (Adding Yoo)

The Office Action further rejects claims 1-31 as being unpatentable over Lindsay and Baumgartner, and further in view of Yoo (U.S. Patent No. 5,431,265). Applicant submits that these claims patentably distinguish over Lindsay and Baumgartner for the reasons set forth above, including the status of Baumgartner as non-analogous art, and that Yoo fails to remedy those deficiencies.

Yoo also is non-analogous art. It relates to an enclosed sports accessory bag. Such bags are not within the Applicant's field of endeavor, nor is such art reasonably pertinent to the utility apron field. One of ordinary skill in the art, seeking to address limitations of utility aprons, would not look to accessory bags for solutions.

Even if considered analogous, which Applicant submits it is not, Yoo fails to provide a suggestion or motivation to apply its teachings to utility aprons. Applicant can find no teaching or suggestion in Yoo that its teachings can or should be applied to any articles other than accessory bags. There is no indication or suggestion that the teachings of Yoo may be applied to utility aprons. Applicants respectfully take issue with the position as set forth in the Office Action at page 5 that the article holding pockets of Yoo themselves provide suggestion enough. It is Applicant's position that the nature of the article that contains the pocket is relevant. An argument that the mere existence of a pocket, regardless of the type of article, can be considered sufficient motivation or suggestion can only be carried if one relies, impermissibly, on hindsight afforded by the invention.

With regard to the claims pertaining to the sizes of the openings, and the summary in the Office Action of *In re Rose*, 105 USPQ 237, 240 and *In re Yount*, 80 USPQ 141, Applicant reiterates the statements made in the Response to Office Action Nos. 2 and 3, e.g., that these cases are specific to their facts and do not provide blanket prohibitions of patentability where size is a distinguishing feature. The Court of Appeals for the Federal Circuit has made amply clear in numerous report decisions that claimed inventions are to be viewed as a whole. To the extent size is a feature that serves to distinguish a claimed invention viewing the claim as a whole, and as here, where that feature provides an advantage not disclosed or suggested in the prior art, patentability may not be precluded based on some overriding proposition that size alone cannot afford a ground for patentability.

Declaration of George Millican Jr.

In addition to the foregoing, Applicant has attached and hereby submits for consideration the Declaration of George Millican, Jr. As set forth in the Declaration, Mr. Millican is an experienced practitioner in the residential and commercial building cleaning field. His Declaration provides further support for the position that the claimed invention would not have been obvious to persons of ordinary skill in the art at the time the invention was made, and that despite the apparent existence of pockets with resilient openings in unrelated fields such as those of Baumgartner and Yoo, practitioners in the cleaning field did not look to such unrelated fields for a solution to the problems addressed and solved by the claimed invention in utility aprons.

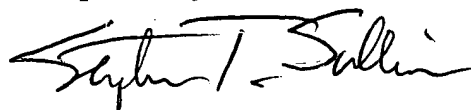
Conclusion

In conclusion, Applicant respectfully submits that claims 1-31 as pending patentably distinguish over the cited and applied references, and are in condition for allowance. Reconsideration of the application is requested in view of the remarks set forth above.

A Petition to Revive Under 37 C.F.R. § 1.137(b) and fee are being filed concurrently with this Response. If any additional fees or amounts are due in connection with the filing of this paper or the prosecution of this application, please charge them to our Deposit Account No. 501324.

Dated: March 23, 2001

Respectfully submitted,



Stephen T. Sullivan
Reg. No. 32,444

CERTIFICATE OF EXPRESS MAIL

Express Mail Label No. EL718168867US

Date of Deposit March 23, 2001

I hereby certify that this Response to Office Action No. 4 and attached Declaration of George Millican, Jr. are being deposited with the U.S. Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. § 1.10 on the date indicated above and is addressed Assistant Commissioner for Patents, Washington, D.C. 20231.

